CF0000060859

Cri Appeal 671/96

(2)

XII-188(Jail)
C. P. P. — 5,000-9-81

Division Bench (Criminal)

APPEAL OF PRISONER

No. 916 Name हिरनराम

Father's name चुअरा

Residen[illegible] Age 30 yrs

Sentenced to आजीवन 302 भा दं वि on 2.2.96

Under section 302 IPC by श्री एस एन तिवारी प्रथम अपर सत्र न्यायाधीश अम्बिकापुर

it is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appelate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not be heard at all If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the appeal and will not be obliged to give a hearing to any legal practitioner who shall afterwards appear.

In the Court of Madhya Pradesh
JABALPUR
27 FEB 96
Registration No. 101
Deputy Registrar
High Court, M.P.

1 Date of Application for copy of Judgement

2 Date of which copy received 2.2.96

3 Date on which Appeal sent

4 Whether the prisoner wishes to be represented or not – Yes/No.

No. Name हिरनराम

Continued in अम्बिकापुर Jail

No. 329 dated 2.2.96 198

Forwarded to the CHIEF JUDICIAL MAGISTRATE Ambikapur

to gather with a copy of judgement or order passed in the case for favour of transmission to the proper Appilliate Court.

संलग्न निर्णय प्रति 6 पन्ना

Superintendent-Central/ Distt./ Sub-Jail

Date of receipt in C. J. M.'S Office 6/2/96

Date of receipt of record to accompany 9/2/96

Memo of Appeal of the Appeliate Court. माननीय उच्च न्यायालय जबलपुर

No. 0/cm. Dated 9/2/96 198

Forwarded to the माननीय उच्च न्यायालय जबलपुर

C.J.Magistrate 9/2/96

Date of receipt in Appliate Court

(P.T.O.)

(25)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.674 **सन्** ~~200~~ 96

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO AND & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 674 of 1996

Appellant : **Hiran Kanwar**

Vs.

Respondent : **State of Madhya Pradesh**

Shri Avinash Mishra, learned counsel for the appellant.
Shri U.N.S. Deo, learned Govt. Advocate for the respondent/State.

ORAL JUDGMENT
(28.08.2006)

Per L.C. Bhadoo , J

The appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure through Superintending of District Jail, Ambikapur against the judgment dated 2.2.1996 passed by Additional Sessions Judge, Ambikapur in Session Trial No. 296/93 whereby he has been convicted under section 302 of the Indian Penal Code for committing the murder of Muslim Miyan and sentenced to undergo imprisonment for life and pay a fine of Rs.2,000/-, in default of payment of fine to further undergo imprisonment for six months.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRAN...674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

2. Case of the prosecution in brief is that on 11.4.1993 at about 2.30 p.m. accused Hiran Kanwar attacked the deceased Muslim with axe on his head as a result of which his skull bone was fractured. The lacerated wound was in the size of 3 x ½ x ½ cm on the right temporal region. While Muslim was being taken to the hospital he succumbed to the injuries sustained by him. Mr. K.R. Tirki, Station House Officer of Police Station – Kusumi who was already present in the village on the date of incident in connection with the investigation of some other crime was informed about the incident by Chowkidar Ramvilas, Devprasad, Ramakant and Gariba on which he recorded the Dehati Nalishi (Ex.P/5). Merg intimation (Ex.P/6) was given by Jitendra Singh, the Head Constable and based on that, First Information Report (Ex.P/1) was registered. Mr. K.R. Tirki took up the investigation. Clothes of the deceased were taken into possession under Ex.P/2. Weapon of offence i.e. axe was taken into possession from brother of the accused under Ex.P/3. Site plan (Ex.P/4) was prepared by Halka Patwari. Thereafter, body of the deceased was sent for postmortem examination to Primary Health Centre, Shankargarh where Dr. F.R. Nirala (PW-7), Assistant Surgeon conducted the postmortem examination and submitted the report (Ex.P/14) in which he opined that cause of death was shock due to head injury and mode of death was homicidal. After completing the investigation charge sheet was filed in

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No...674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 3–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the Court of Judicial Magistrate First Class, Ambikapur who in turn committed the case to the Court of Sessions Judge, Ambikapur from where learned Additional Sessions Judge received the same on transfer for trial.

3. Prosecution in order to establish the charge against the accused/appellant has examined as many as eight witnesses. Statement of the accused under Section 313 of the Cr.P.C. was also recorded in which he pleaded ignorance about the material appearing against him in the prosecution evidence and stated that at the time of incident his mental condition was not perfect. He further stated that he is innocent and has been falsely implicated in the crime in question.

4. Learned Additional Sessions Judge after hearing the arguments advanced by the Additional Public Prosecutor as also counsel for the accused/appellant has convicted and sentenced the accused as mentioned in paragraph one of this judgment.

5. We have heard Shri Avinash Mishra, learned counsel for the appellant and Shri U.N.S. Deo, learned Govt. Advocate for the respondent/State.

6. Learned counsel for the appellant has not disputed the fact that the nature of death of Muslim was homicidal. Apart from this, Dr. F.R. Nirala

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA No. 674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –५–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(PW-7) who has conducted the postmortem examination on the body of the deceased has stated that there was one lacerated wound on the head in the size of 3 x ½ x ½ cm, blood was oozing from the said injury and the skull bone was fractured which had pierced into the brain, membranes of the brain were found ruptured and the death was homicidal in nature. Evidence of eyewitnesses PW-3 Hasiman Bibi, the wife of the deceased, PW-4 Guthul and PW-6 Gariba establishes the involvement of the accused in the crime in question as it shows that the accused attacked the deceased with axe on his head as a result of which he sustained injuries and succumbed to the same while being taken to the hospital and therefore, from the ocular and medical evidence it is established the death was homicidal in nature.

7. As far as involvement of the accused in the crime in question is concerned, learned counsel for the accused/appellant at the outset argued that the accused/appellant has wrongly been convicted as he was suffering from insanity at the time of commission of crime and therefore, in view of section 84 of the IPC the accused is entitled for benefit of the same. He further submits that from the prosecution evidence it is established that at the time of commission of the crime the accused was suffering from insanity.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CA No - 674/16 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. On the other hand supporting the impugned judgment of the trial Court learned counsel appearing for the respondent/State submits that it is true that the defence has taken the plea of insanity but no evidence has been produced by the defence to establish that the accused was insane at the time of commission of the crime in question. He argued that in view of section 105 of the Evidence Act the burden lies on the defence to prove the fact that the accused/appellant was suffering from insanity at the time of incident.

9. In order to seek protection under Section 84 of the IPC, the onus is on the accused to establish that at the time of commission of offence he was suffering from unsoundness of mind. Section 84 contemplates that;

> "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Therefore, when a plea of legal insanity is set-up, the Court has to ascertain whether at the time of commission of offence the accused, under the supervening circumstances on account of unsoundness of mind, was incapable of knowing the nature of act or that he was doing what was either

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CA No. 674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

wrong or contrary to the law. The crucial point of time for ascertaining the state of mind of the accused is the time when the offence was committed and in order to ascertain whether the accused was suffering from unsoundness of mind as to be entitled to the benefit of Section 84 of IPC can only be established from the circumstances, which preceded, attended and followed the crime. In this connection, as per the provisions of Section 105 of the Evidence Act there is burden on the accused to discharge the same in order to claim benefit of Section 84 of the I.P.C. Section 105 envisages that;

> "When a person is accused of any offence, the burden of proving the existence of circumstances brining the case within any of the General Exceptions in the Indian Penal Code, 1860 or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

The provisions of section 84 of IPC read with Section 105 of Evidence Act came up for consideration before the Hon'ble Apex Court in the Matter of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.No.674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Dahyabhai Vs State of Gujrat reported in **1964(7)SCR 361** and the Hon'ble Apex Court held that;

> "....Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged. The burden of proof on the accused to prove the insanity is no higher than that rests upon a party to civil proceedings, which, in other words, means preponderance of probabilities...."

The Court further held that doctrine of burden of proof in the context of plea of insanity may be stated in the following words:

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A.No. 674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 8 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(1) the prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea; and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(2) there is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S.84 of the Penal Code: the accused may rebut it by placing before the court all the relevant evidence-oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings:

(3)- Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the court may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

on the ground that the general burden of proof resting on the prosecution was not discharged"

Therefore, the prosecution, in a case of homicide shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, under Section 105 of Evidence act the burden of proving the existence of circumstances brining the case within the said exception lies on the accused, and the court shall presume the absence of such circumstances. The accused has to rebut the presumption that such circumstances did not exist, by placing material before the court sufficient to make it consider the existence of such circumstances so probable that a prudent man' would act upon them. The accused has to satisfy the standard of a 'prudent man. If the material placed before the court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of 'prudent man' the accused will have discharged his burden.

10. In the light of the above law laid down by the Apex Court we have to scrutinize the evidence available on record.

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मामला क्रमांक CCA No. 674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 10 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11. In the first instance if we look into the Dehati Nalishi which was recorded by Station House Officer of Police Station Kusmi who by chance was already present in the village in connection with investigation in some other crime, was informed that since last three-four days the accused was mentally upset, therefore, he went to village Harra Dhora. Deceased Muslim, Guthul, Ganga, Meghnath, Gulab etc. also went there to bring him back. Muslim had also practiced magic on the accused to cure him. He took him to the house and locked him in a room. Thereafter, accused Hiran came with axe from the room and attacked Muslim with the said axe who was standing by the road side. PW-3 Hasiman Bibi, the wife of the deceased has stated in her examination in chief that accused attacked her husband with axe twice. In the cross examination she has admitted that there was no dispute between her husband and the accused. Accused was known to her for last 8-10 years and on the fateful day a bus was standing in the village and the accused started hitting the bus with the axe. However, bus left the place. She also admitted that on the date of incident the villagers locked Hiran for one hour in a room considering that the accused was overpowered by the evil spirit and before that accused was never locked in the room. When accused came out of the room with axe, the villagers tried to catch him but he had run away and attacked her husband with axe. She has further stated that it is correct to say that he was considering

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मामला क्रमांक Cr.A.No.674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 11 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

himself as God. PW-4 Guthul has stated in his evidence that the accused attacked the deceased with axe and thereafter he went towards the village carrying axe in his hand and seeing this the villagers hid themselves in their houses. In the cross examination this witness has stated that it is correct to say that the accused was not mentally perfect. It is true that the villagers were scared that the accused should not attack anyone with axe. It is true that there was no dispute between the accused and the deceased and they were on talking terms. He has also stated that he is not in a position to say that how long the accused was suffering from mental illness. PW-6 Gariba has also stated in his cross examination that accused was mad but since when he was mad it was not known to him. The accused was not having any dispute with anyone in the village and the accused and the deceased were on talking terms on the date of incident. It is true that the villagers had locked the accused in a room for one hour on the date of incident. He was locked in the room so that he is not able to attack anyone. It is also true that on the fateful day when a bus came in the village he hit it with the axe. Even though Dr. T. Sai, (PW-8) has stated in his evidence that he examined the accused on 14.7.1993 and on that day his mental condition was perfect and he was talking properly yet in the cross examination this witness has stated that before examining the accused he had no occasion to examine any person suffering from mental illness.

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मामला क्रमांक Cr.A.No.674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —12—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Moreover he had not conducted the test regarding the mental condition of the accused in a scientific manner to ascertain that whether on the relevant date i.e. the date of commission of crime the accused was suffering from insanity or not. The incident in this case took place on 11.4.1993 whereas the accused was examined by this doctor on 14.7.1993. Therefore, the evidence of this witness is of no avail to the prosecution as he was not an expert in the field of Psychiatry.

12. If we examine the evidence of these prosecution witnesses in the light of the aforesaid judgment of the Apex Court, it is apparent that initially the burden is on the prosecution to establish the ingredients of the offence and requisite intention of the accused described in section 299 of the IPC. From the above evidence of the witnesses it is clear that accused and the deceased were on talking terms and there was no animosity between the two. It has also come in the evidence available on record that the accused was behaving like a mad man and therefore, on the date of incident he was locked in a room for one hour and thereafter he came out of the room and attacked the deceased on his head with the axe who was standing by the side of the road. The above circumstances which have come in the prosecution evidence show that intention to cause death of Muslim was missing in this case.

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मामला क्रमांक Cr.A.No. 674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —13—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13. Now as far as the question of insanity is concerned, as per the above judgment of the Apex Court the burden on the accused is no higher than that rests on the party in a civil proceeding, therefore, from the evidence available on record the preponderance of probabilities is to be seen.

14. As has been discussed above, in the cross examination of the prosecution witnesses mentioned above it has come in the evidence that the accused left the village 3-4 days prior to the date of incident and the deceased along with other villagers had gone in search of the accused, he brought him to the village and locked in a room and was treating him by practicing magic for mental illness and in that process the accused came out with the axe and attacked the deceased with it on his head who was standing by the side of the road. Before that accused also hit the bus with the same axe which was standing in the village. All these circumstances go to show that at the time of commission of the crime the accused was suffering from unsoundness of mind. At the time of commission of crime on account of insanity he was incapable of knowing the nature of his act that he is doing what is either wrong or contrary to law. Therefore, we are of the considered opinion that the accused/appellant is entitled for the benefit of section 84 of the IPC and thus the conviction of the appellant under section 302 of the IPC and the resultant sentence imposed on

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 674/96 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —14—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

him by the trial Court cannot be sustained as the same is not based on legal principles of criminal jurisprudence as the prosecution has not been able to establish the ingredients necessary for constituting the offence of murder. More over, from the evidence available on record the probability of accused being of unsound mind cannot be ruled out.

15. In the result, the appeal is allowed. Impugned judgment of the trial Court is set aside and the accused is acquitted of the charge leveled against him. He be set at liberty forthwith if not required in any other case as the record shows that the accused is in detention since 1993.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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